2002 ANNUAL REPORT TO THE NINETY-

January 31, 2003

Honorable Michael J. Madigan
Speaker of the House
House of Representatives
Springfield, IL 62706

Honorable Emil Jones, Jr.
President of the Senate
State Senate
Springfield, IL 62706

Honorable Tom Cross
Republican Leader
House of Representatives
Springfield, IL 62706

Honorable Frank Watson
Republican Leader
State Senate
Springfield, IL 62706

Gentlemen:

Attached is the 2002 Annual Report of the Illinois Supreme Court. I submit this Report to the General Assembly pursuant to Article VI, section 17 of the Illinois Constitution of 1970, which requires the Supreme Court to report annually in writing to the General Assembly regarding the annual Judicial Conference. The Judicial Conference considers the work of the courts and suggests improvements in the administration of justice. In compliance with the constitutional mandate, this Report includes a summary of the work performed by the several committees which make up the Judicial Conference.

The Committees of the Judicial Conference include (1) Alternative Dispute Resolution, (2) Automation and Technology, (3) Criminal Law and Probation Administration, (4) Discovery Procedures, (5) Education, (6) Study Committee on Complex Litigation, and (7) Study Committee on Juvenile Justice. On October 24-25, 2002, the Judicial Conference was convened to consider the aforementioned committees' reports and recommendations. Those reports detailed initiatives undertaken by the respective committees during conference year 2002. This Annual Report summarizes those initiatives, which also foretell of the projects and goals anticipated to be undertaken by the conference committees in 2003.

With the submission of this report to the General Assembly, the Supreme Court renews its commitment to the effective administration of justice and the management of the courts, to the careful stewardship of those resources provided for the operation of the courts, and to the development of plans and goals designed to assure that the Illinois court system is meeting the needs of our citizens.

On behalf of the Court, I respectfully submit the Supreme Court's 2002 Annual Report to the General Assembly.

Sincerely,

Mary Ann G. McMorrow
Chief Justice
Supreme Court of Illinois

THIRD ILLINOIS GENERAL ASSEMBLY

2002 Illinois Judicial Conference The 49th annual meeting of the Illinois Judicial Conference was held October 24-25, 2002, in Chicago. The Conference, which is authorized by Article 6, section 17 of the Illinois Constitution, is charged to consider the work of the courts and to suggest improvements in the administration of justice. Conference membership includes the seven Illinois Supreme Court Justices, and appellate, circuit and associate judges from each of Illinois' five judicial districts.

The work of the Conference is ongoing, conducted throughout the year, largely through the efforts of seven separately appointed committees: Alternative Dispute Resolution Coordinating Committee, Committee on Criminal Law and Probation Administration, Committee on Discovery Procedures, Study Committee on Juvenile Justice, Study Committee on Complex Litigation, Automation and Technology Committee, and the Committee on Judicial Education. The various committee rosters include appellate, circuit and associate judges who serve as full Judicial Conference members. The committees are assisted in their work by non-Judicial Conference judges, attorneys, and law professors, who are appointed by the Supreme Court to serve as either associate members or advisors.

An Executive Committee, which is authorized by Supreme Court Rule 41, acts on behalf of the Conference when the Conference is not in session. This Committee is comprised of fourteen judges, six from the First Judicial District and eight from the downstate judicial districts, and is chaired by the Chief Justice. The Executive Committee previews the written reports of the conference committees and submits, for the Court's approval, an agenda for the annual meeting.

Day one of the 2002 Annual Meeting commenced with a Conference lunch in which members of the Conference were joined by associate members and advisors. Chief Justice Mary Ann G. McMorrow welcomed the attendees and also recognized the presence of current members of the Supreme Court as well as retired Supreme Court Justices Benjamin K. Miller and John L. Nickels. In her remarks, the Chief Justice acknowledged the leadership of the recently retired Chief Justice, the Honorable Moses W. Harrison II. Chief Justice McMorrow also praised the work of the Conference members and committees for their public service and dedication to improving the administration of justice in Illinois.

Referencing the terrorists' attacks on this nation of September 11, 2001, the continued international turbulence and regional conflicts around the globe, the specter of war against Iraq, and recent acts of violence in the American society, the Chief Justice admonished the Conference that peace and justice can not simply be presumed. For judges, the acts of terrorism and violence, should both reinforce the significance of the rule of law in the maintenance of an ordered society as well as the judicial responsibility to protect and preserve peace and justice by ensuring and sustaining the most effective and efficient administration of the judicial system. Chief Justice McMorrow also recognized the accomplishments of two special Supreme Court Committees, the Committee on Civility and the Committee on Child

"The Supreme Court shall provide by rule for an annual judicial conference to consider the work of the courts and to suggest improvements in the administration of justice and shall report thereon annually in writing to the General Assembly not later than January 31." Article VI, Section 17, Illinois Constitution

Custody. Highlighting recent advances in the use of technology, the Chief Justice informed the Conference that the Court had approved policies which will permit electronic access to court records and the ability to file pleadings electronically. Finally, Chief Justice McMorrow offered that much effort continues to be put forward in ensuring the highest level of competency in the trial of capital cases with almost 500 attorneys having been approved for admission to the Capital Litigation Trial Bar.

Day one included a half-day dedicated to Conference committee meetings which were devoted in part to the finalization of their annual reports and to preliminary planning for Conference year 2003 initiatives. An evening reception concluded the first day activities for the 2002 Judicial Conference.

On day two of the Annual meeting, Chief Justice McMorrow convened the members for the plenary session. At that time, each of the committees presented their annual reports and recommendations to the full Conference. The following summarizes the written and oral presentations of those reports:

Alternative Dispute Resolution Coordinating Committee.

The Alternative Dispute Resolution Coordinating Committee, whose task is to evaluate, monitor, study, and make recommendations regarding the use of dispute resolution programs, reported that the climate for alternative dispute resolution (ADR) continues to be favorable and the legal community is becoming increasingly receptive to ADR programs. As part of its charge, the Committee monitors the court-annexed mandatory arbitration program, now in its fifteenth year of operation and serving the needs of fifteen counties. ADR continues to be an effective case management tool for the trial courts in that it reduces the number of cases which proceed to trial as well as the amount of time cases remain in the court system. In January of each year, an annual report regarding the court-annexed mandatory arbitration program is provided to the legislature.

During Conference year 2002, the Committee analyzed whether proposing a modification to Supreme Court Rule 86(b) to increase the arbitration jurisdictional limits to $50,000 (or such lesser jurisdictional limits as may be implemented by local circuit option) might assist in expanding cases for which arbitration is an option and thus further reducing the caseload burden in the courtrooms. Historically, the Supreme Court has considered requests for increases on a case-by-case basis. The Committee advised the judicial circuits which operate an arbitration program that they may petition the Supreme Court to increase the jurisdictional limits. During this Conference year, programs operating in the circuit courts in Lake, Mc Henry, Winnebago and Boone counties successfully petitioned the Court and are now operating under the increased jurisdictional limit. Du Page County arbitration, for which the Supreme Court removed the designation of "pilot project" during this Conference year, now also operates at the $50,000 jurisdictional limit. Additionally, a proposal that would require that the plaintiff specify whether bills incurred had been paid or remain unpaid has been forwarded to the Supreme Court Rules Committee. The general purpose is to merge the awards between jurors and arbitrators toward a commonality.

The Committee meets annually with supervising judges and arbitration administrators to discuss issues concerning the arbitration program and any proposals for rule amendments. At

this year's meeting, held June 17, 2002 in Chicago, the Committee discussed such issues as automation and technology needs to help improve data collection, submission, and analysis as well as the disparity between rejected arbitration awards and resultant jury verdicts. Issues, including retraining for arbitrators, permitting laypersons to serve as arbitrators on an arbitration panel, implementing a mechanism to keep arbitrators apprised of jury verdicts via a feedback system, and the Good Faith participation rule, remain areas to be further discussed next Conference year.

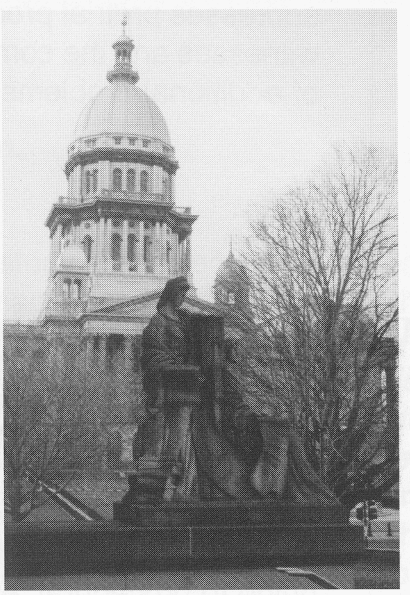
In the area of mediation, the Committee continued to oversee the court-sponsored pilot major civil case mediation programs. For State FY'02, a total of 334 cases were referred to mediation in the seven program sites, representing an increase of over 26% in referrals, while 184 resulted in a full settlement, over a 14% increase from the prior fiscal year. It is important to recognize that the benefits of major civil case mediation cannot be solely calculated by the number of cases settled. Because these cases are major civil cases by definition, early settlement of a single case represents a significant savings of court time for motions and status hearings in addition to trial time.

Criminal Law and Probation Administration Committee.

The Committee on Criminal Law and Probation Administration is responsible for making recommendations on matters affecting the administration of criminal justice and the probation system. During Conference year 2002, the Committee proposed changes to two Supreme Court Rules. Proposed changes to Rule 434(b) are intended to clarify that the addresses of prospective jurors should not be disclosed unless non-disclosure would cause substantial prejudice to a party. Proposed changes to Supreme Court Rule 402(a) would set forth the required trial court procedures for accepting an admission to a probation revocation proceeding. The Committee's proposal to consider amended Rule 402(a) has been forwarded to the Supreme Court Rules Committee.

In the arena of informant testimony, the Committee agreed that juries could benefit from a specific, concise instruction that informant testimony must be viewed with caution. The Committee found that a cautionary instruction based on the instruction on accomplice testimony, would properly inform the jury without overemphasizing the issue. The Committee's proposal to amend IPI Criminal No. 3.17 has been forwarded to the Supreme Court's IPI Criminal Committee for study.

The Committee continued to monitor the progress of the Criminal Code Rewrite and Reform Commission ("CCRRC") established by the Governor in 2000. Though the CCRRC made limited progress during this Conference year, the Committee continues to support revision of the Illinois criminal law statutes to simplify and clarify existing law, to provide trial courts with a range of effective sentencing options, and to provide trial judges with the discretion to a fair and effective system of criminal justice.



The Committee observed that although P.A. 92-508, (legislation which provides State funding for two-thirds of the salary of a full time public defender who is paid at least 90% of the salary of the state's attorney in the county), became effective on July 1, 2002, the legislation was not funded. The Committee continues to support legislative efforts to improve funding for the criminal justice system.

In addition to these activities, a subcommittee was formed to study Youthful Offender Programs and the availability and efficacy of alternative sentencing programs for young offenders who are entering the criminal justice system for the first time. The Committee also began a comprehensive review of probation issues during this Conference year. In light of the scope of these interrelated topics, and their myriad issues, the Committee anticipates providing a more comprehensive report on probation in the next Conference year.

Finally, the Committee continued to explore and analyze such issues as the impact of the U. S. Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) on the trial courts as well as such diverse issues as the use of "John Doe" warrants in which an offender's name is not known but in which DNA evidence is available to provide an identification. P.A. 92-752, effective August 2, 2002, provides that an offense involving sexual conduct may be commenced at any time if DNA identification of the offender is obtained and placed in the DNA data base within 10 years of the offense. Thus, the Committee concluded that no action was necessary regarding the "John Doe" warrants.

Committee on Discovery Procedures.

The goals of the Committee on Discovery Procedures include streamlining discovery procedures, increasing compliance with existing rules, and eliminating loopholes and potential delay tactics. The Committee devoted substantial time to discussing the problems and potential solutions surrounding the disclosure requirements as provided in Supreme Court Rule 213. After careful study, the Supreme Court included the Committee's proposed amendments to Rule 213, along with the Supreme Court Rules Committees' version of proposed amendments.

The Committee concluded its study of a proposed amendment to Supreme Court Rule 206(c), which concerns the method of taking depositions on oral examination, and determined not to forward any recommended changes. The Committee also concluded its study of other discovery related proposals, including a proposal to amend Supreme Court Rules 201(l) and 237. The Committee, after careful study, determined that the proposals would merit further review from the Supreme Court Rules Committee. Finally, the Committee addressed the Supreme Court Rules Committee's proposal to amend Supreme Court Rule 218(c), which addresses pretrial procedure to include rebuttal witnesses within dates set for the disclosure of witnesses and the completion of discovery. The Committee rejected the proposal citing a range of additional problems that would result from the rule amendment.

Study Committee on Juvenile Justice.

Consistent with its charge, the Study Committee on Juvenile Justice continued to study and make recommendations on aspects of the juvenile justice system, propose education and training programs for judges, and prepare and update the juvenile law benchbook. In response to significant expansion of statutory and case law governing Illinois juvenile court proceedings in recent years, one of the major tasks of the Committee during this Conference year was the publication of Volume II of the *Illinois Juvenile Law Benchbook*, which completed the two-volume set. The *Benchbooks* are designed to provide judges with a practical and convenient guide to procedural, evidentiary, and substantive issues arising in Juvenile Court proceedings.

The books suggest to trial judges relevant statutory provisions, identify areas and issues which present challenges unique to these proceedings and, where possible, suggest the controlling case law.

During the Conference year, the Committee continued its work on drafting uniform juvenile court orders for use by judges involved in abuse, neglect, and/or dependency proceedings in the Juvenile Court. The Committee designed the proposed uniform orders to fulfill myriad critical functions. First, the orders incorporate the findings required by federal law when a child is removed from the custody of a biological parent(s). Second, the draft orders incorporate the findings required by the Illinois Juvenile Court Act. Third, the proposed uniform orders are designed to provide a clear judicial statement to the parties which identifies the parenting concerns required by the Court to be addressed before custody will be returned to the parent(s). Finally, the draft orders are designed to serve as a convenient summary of the previous findings made by the court.

The Committee continued to discuss the anticipated 2003 Federal Review of the Illinois Juvenile court's child welfare related duties. The review will study compliance with federal mandates concerning necessary findings in juvenile cases to ensure conformance with the "State Plan" requirements in Titles IV-B and IV-E of the Social Security Act. Specifically, Title IV-B concerns the requirements for State plans regarding child welfare issues and Title IV-E concerns the requirements for State plans regarding foster care and adoption assistance. Juvenile court orders will be reviewed to determine compliance with these mandates as they authorize federal funding for foster care maintenance payments. Over the past two years there have been a number of inter-related initiatives to assist in moving Illinois to a position of conformance, including the above referenced uniform court orders, regional training seminars. The Committee noted the Supreme Court's 2001 supervisory order directing judges to comply with the federal requirements. Failure to comply with the federal requirements could result in the loss of many millions of dollars in federal funding for foster care placement in Illinois.

The Committee continued its commitment to educating Illinois judges on juvenile law issues during the 2002 Conference year. In December of 2001, various committee members assisted in the presentation of a program on juvenile law at the 2001 New Judge Seminar. Committee members contributed to and served on the faculty of the 2002 Education Conference held in February and March 2002. These presentations focused on custodial statements by juveniles in criminal cases, alternatives to detention, and programs implementing restorative justice. In conjunction with the American Judicature Society and the Administrative Office of the Illinois Courts, Committee members also presented to, and participated in, the *2002 Illinois Juvenile Law Workshop* to address issues of permanency and the termination of parental rights.

Study Committee on Complex Litigation.

The mission of the Study Committee on Complex Litigation is to study, make recommendations on, and disseminate information regarding successful practices for managing complex litigation in the Illinois courts. The major work of the Committee has been the completion, annual updates and modifications to the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation*. During this Conference year, the committee updated the *Illinois Manual for Complex Civil Litigation* with a twelve-page cumulative list of manual pages affected by recent developments in the law. The Committee also drafted new chapters on joint and several liability and contribution, as well as on damages and attorneys' fees. Over 200 judges have received copies of the manual, and it has been used as the basic instructional text for a judicial seminar on complex litigation.

The Committee also updated the *Illinois Manual for Complex Criminal Litigation* with an eleven-page cumulative list of manual pages affected by recent developments. The Committee also drafted a new chapter on complex post-conviction review matters. This new chapter reviews and discusses management of the flow of post-conviction review petitions; issues specific to the Post-Conviction Hearing Act, such as waiver, res judicata, and evidentiary hearings; and issues relating to the Habeas Corpus Act, and other avenues of post-conviction review.

Automation and Technology Committee.

Technology affects, or has the potential to affect, nearly all operational and administrative judicial functions. New and improved applications and equipment are introduced regularly, each offering a promise of bestowing greater efficiency and a cost savings for the judicial system. The Automation and Technology Committee is charged with the very formidable task of evaluating, monitoring, coordinating and making recommendations concerning automated systems for the Illinois judiciary.

During the 2002 Conference year, the Committee continued its efforts to provide computer security information to the Illinois judiciary. Toward that effort, the Committee developed and disseminated a computer security brief at the two sessions of the 2002 Education Conference. The brief provides a succinct and handy reference regarding computer security tactics as well as a quick view reference for access to the Supreme Court's web site. The Committee also empowered a sub-committee on computer security to craft a model policy on security and computer usage for judges. An additional sub-committee on New Technologies secured reference documents on topics, including, legal research, electronic filing, laptop computers, personal digital assistant (PDA) device usage, a concept of a cyber jury café, wireless technology concepts, e-learning and e-book usages, data warehousing, etc. Finally, as a component of its work, the Committee recommended to all judges that they access through the Administrative Office's Resource Lending Library the book entitled *"Effective Use of Courtroom Technology, A Judge's Guide to Pretrial and Trial."*

Committee on Judicial Education.

The Committee on Judicial Education reaffirmed their commitment to judicial education as an essential element of our judicial system. Judicial education is a primary vehicle by which professional competency can be both sustained and expanded. The Committee maintains that given the rapid developments in substantive and procedural law, as well as the obligation to properly train new judges, the need for an effective and efficient approach to judicial education can not be overstated.

In February and March 2002 the Committee conducted the second Education Conference under the auspices of the Supreme Court's *Comprehensive Judicial Education Plan for Illinois Judges*. Over 900 judges attended the conference, held February 6-8 and March 20--22 at the Hilton Chicago and Towers. The Conference consisted of 22 topics taught by 59 judicial faculty and guest speakers. The Conference blended plenary sessions on such topics as judicial ethics and conduct as well as disclosure and recusal issues, while also affording participants to select workshops covering an array of timely and stimulating training topics.

Some of the most notable sessions covered such areas as "Legal Issues Raised by Cutting-Edge Science", "Instructing a Civil Jury", and "Managing a High Volume Courtroom."

In addition to the Education Conference, the Committee conducted a New Judge Seminar, four regional seminars, four mini-seminars, and a Faculty Development Workshop. The regional seminars included the fifth annual DUI program conducted with funding from the Illinois Department of Transportation.

In early 2002 the Supreme Court approved the Committee's recommendation to conduct a second Advanced Judicial Academy. The Academy will again be a one-week program, held June 2-6, 2003, at the University of Illinois College of Law, Champaign, with enrollment limited to 75 judges. The Academy Planning Committee has developed the theme, "evidence and proof of facts", for the Academy in 2003. Preliminary discussions suggest the program will be interdisciplinary, addressing the history and application of the rules of evidence, as well as examining social, psychological, and cultural issues that affect credibility.

During the Conference year, at the request of the Judicial Mentor Committee, the Committee on Education recommended, and the Supreme Court approved, appointment of a special committee to develop a new videotape to train judges to serve as mentors in the New Judge Mentoring Program. The new video tape has recently been completed and is available to judges. The Committee continues to sponsor the Resource Lending Library. Housed in the Springfield office of the Administrative Office, the library continues to be an invaluable resource for the judges. Loan materials available through the Library include video tapes, audio tapes, and publications. The committee has planned, and the Supreme Court has approved, a full range of seminars and workshops for Conference year 2003.

Supreme Court Decisions Which the General Assembly May Wish to Consider

Pleading Standards under the Post-Conviction Hearing Act

In *People v. Edwards*, 197 Ill. 2d 239 (2001), our court held that the circuit court's dismissal of the defendant's *pro se* post-conviction petition was reversed where there is no indication that defense counsel reviewed the plea proceedings for error or consulted with the defendant regarding grounds for an appeal before deciding not to file the motion to withdraw the guilty plea. A special concurrence discussed the inherent problems caused by the vague language contained in section 122-2.1 of the Post-Conviction Hearing Act regarding the pleading requirements for first-stage post-conviction petitions.

Motion for Summary Judgment Inappropriate under the Sexually Dangerous Persons Act

In *People v. Trainor*, 196 Ill. 2d 318 (2001), our court held that a State motion for summary judgment is inappropriate under the Sexually Dangerous Persons Act. In discussing the Act, this court further noted that the Act is silent and contains no limitation on the number of applications showing recovery that a sexually dangerous person may file. In addition, unlike the Sexually Violent Persons Act, the Act also fails to specify the length of time allowed between applications.

Discretionary Immunity Under the Tort Immunity Act

In *Arteman v. Clinton Community School Dist. No. 15*, No. 90701 (January 25, 2002), our court held that a school district was immune from liability where a student alleged negligence in the failure to provide necessary roller-blade safety equipment. This court concluded that the school district's decision not to provide safety equipment was a discretionary policy determination and that section 2-201 of the Tort Immunity Act provided immunity against the plaintiff's claims. In so holding, the court noted that this decision was compelled by the language of the Tort Immunity Act and while somewhat

harsh, its "inescapable" conclusion served only to highlight "the desperate need for legislative attention to the scope of discretionary immunity in this context."

Statute of Repose in Attorney Malpractice Actions

In *Petersen v. Wallach*, No. 89947 (January 25, 2002), our court held that the six year statute of repose for attorney malpractice actions did not apply when the alleged injury did not occur until the death of the person for whom services were rendered and that the manner of distributing the decedent's assets was of no consequence. In reaching this conclusion, the court noted that when words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh or unjust and that such consequences can be avoided only by a change of the law, not by judicial construction.

Rejection of the "Exculpatory No" Doctrine

In *People v. Ellis*, S. Ct. Doc. 89649 (February 22, 2002), our court declined to recognize the "exculpatory no" doctrine as an exception to criminal liability for obstruction of justice pursuant to section 31-4(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/31-4). The court observed that the statute provides that a person obstructs justice when he or she knowingly furnishes false information with intent to prevent the apprehension or obstruct the prosecution of "any person." Under the statute's plain language, it includes within its scope a person who makes false statements to obstruct his or her own apprehension or prosecution. The court also noted that although some public policy arguments could be made in favor of the doctrine, "[t]he answer to this problem lies primarily with the legislature," and that "[o]ur General Assembly has the authority to amend section 31-4(a) in such a way that it cannot be misused."

15-Year Sentencing Enhancement for Armed Robbery is an Unconstitutional Violation of the Proportionate Penalties Clause

In *People v. Walden*, S. Ct. Doc. 90976 (April 18, 2002), this court held that the 15-year sentencing enhancement for armed robbery while in possession of a firearm (720 ILCS 5/18-2(a)(2),(b)) violated the proportionate penalties clause of the Illinois Constitution and was unenforceable. The court found that the enhancement created a more severe punishment for the less serious offense of armed robbery while in possession of a firearm than existed for armed violence predicated upon aggravated robbery. This court also held that the holding in *Walden* controlled in *People v. Garcia*, S. Ct. Doc. 90958 (April 18, 2002), *People v. Blanco*, S. Ct. Doc. 91085 (April 18, 2002), and *People v. Devenny*, S. Ct. Doc. 91291 (April 18, 2002).

Grandparent Visitation Statute Held Facially Unconstitutional as Denying Due Process

In *Wickham v. Byrne*, S. Ct. Doc. 92048, 92135 cons. (April 18, 2002), this court held that the grandparent visitation statute (750 ILCS 5/607(b)(1); (b)(3)) was facially unconstitutional on the basis that it violated the substantive due process rights of parents to raise their children as they saw fit. The court held that the statute impermissibly placed a parent on an equal footing with a person seeking visitation, and also directly contravened the traditional presumption that a parent is fit and acts in the best interests of the child. In *Schweigert v. Schweigert*, S. Ct. Doc. 92517 (June 6, 2002), we reaffirmed the holding in *Wickham* that section 607(b), in its entirety, is facially unconstitutional.

Appearances Via Closed Circuit Television in Criminal Cases

In *People v. Lindsey*, No. 89138 (June 20, 2002), our court held that the use of closed circuit televisions at the defendant's arraignment did not constitute plain error despite the circuit court's failure to implement rules for use during closed circuit television proceedings in accordance with

legislative mandate. The dissent discussed numerous statutes from other states where the legislature enacted specific procedures intended to safeguard the defendant's constitutional rights and the need for similar legislative action in Illinois.

Post-Conviction Petition - Timeliness

In *People v. Boclair*, Nos. 89388, 89471, 89534 cons. (August 29, 2002), this court held that the circuit court may not summarily dismiss a post-conviction petition on timeliness grounds. The court concluded that, if the legislature intended for a trial judge to *sua sponte* dismiss a petition as untimely, it would have so provided in section 122-2.1(a)(2) of the Act. The court determined that the matter of untimeliness should be left for the State to assert during the second stage of the post-conviction proceedings. A special concurrence emphasized some of the problems with the current statutory language of the Post-Conviction Hearing Act, as discussed in the opinion, and urged the legislature to clear up the ambiguities surrounding its construction.

Call for "Structured Reform" Where Appeals are Taken From Orders Terminating Parental Rights and Adoption Proceedings are Occurring Simultaneously

In *In re Tekela*, S. Ct. Doc. 91577 (August 29, 2002), this court considered a case where a mother's parental rights had been terminated by way of summary judgment. The mother timely appealed this ruling, but she failed to seek a stay of proceedings pending appeal. The appellate court ruled that summary judgment had been improperly granted, and reversed and remanded the case to the circuit court for further proceedings. However, in the 22 months between the entry of the termination order and its reversal on appeal, the children had been adopted and the statutory one-year period for contesting the adoption had expired. The court held that, before the appellate court issued its ruling, the termination issue had been rendered moot by virtue of the adoptions. Accordingly, the appellate court judgment was reversed, its remanding order was vacated, and the circuit court's termination order was reinstated. However, within the course of the opinion the court noted "the compelling need for structured reform in this area," and concluded that, from the child's perspective, "the best solution is an expeditious resolution of the appeal and a stay pending that resolution." Such an approach was deemed "necessary to improve expediency while promoting finality and stability."

Section 20-104(b) of the Code of Civil Procedure is Unconstitutional To the Extent it Purports to Confer Standing on Private Citizens to Sue in Cases Where the State is the Real Party in Interest

In *Lyons v. Ryan*, S. Ct. Doc. 92503 (September 19, 2002), this court considered the constitutional validity of section 20-104(b) of the Code of Civil Procedure (735 ILCS 5/20-104(b)), which provides that a private citizen may bring a lawsuit to recover damages from persons who have defrauded the State if the appropriate government official fails to file suit or arrange for settlement of the action, after notice. The court held that section 20-104(b) is an invalid usurpation of the constitutional authority of the Attorney General. In this case, the State was the real party in interest, and, pursuant to the Constitution, could be represented only by the Attorney General.

The Limitations on Pretrial Bail Set Forth in Section 110-4(b) of the Code of Criminal Procedure Violate Due Process

In *People v. Purcell*, S. Ct. Doc. 92739 (October 3, 2002), this court held that section 110-4(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-4(b)) violates article I, section 9 of the Illinois Constitution of 1970, which provides an accused with the right to obtain pretrial bail. Article I, section 9 provides that pretrial bail may be denied if the accused is charged with a capital offense or an offense for which a sentence of life imprisonment may be imposed and where the proof is evident or the presumption great. The court held that section 110-4(b) impermissibly goes beyond the language of article I, section 9 by placing the burden of proof upon the accused to prove entitlement to bail.

However, this court also determined that the unconstitutional language of the statute is severable.

Remand for Evidentiary Hearing on Defendant's Post-Conviction Claims in Light of Atkins v. Virginia, 536 U.S. ___, 153 L. Ed. 2d 335, 122 S. Ct. 2242 (2002)

In *People v. Pulliam*, No. 89141 (October 18, 2002), this court rejected the defendant's post-conviction claims but remanded this action to the circuit court for an evidentiary hearing, in light of the recent United States Supreme Court decision in *Atkins v. Virginia*, 536 U.S. ___, 153 L. Ed. 2d 335, 122 S. Ct. 2242 (2002), to determine whether the defendant is mentally retarded and therefore may not be executed. The opinion emphasized that "this case is before us on review under the Post-Conviction Hearing Act. The appropriate remedy here is simply a remand for a hearing under *Atkins*. It would not be appropriate for this court to usurp the authority of the legislature by fashioning procedural and substantive standards in relation to the *Atkins* hearing. Such matters are best left to the determination of the legislature following discussion and debate. The legislature may choose to eventually adopt procedural standards to govern *Atkins* issues that arise prior to conviction and sentence."

No Specificity Requirements for Motions to Reconsider in Non-jury Cases

In *Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24 (2002), our court considered the amount of detail that must be included in a motion to reconsider in a nonjury case for such a motion to qualify as a post-judgment motion, tolling the time for filing a notice of appeal until its disposition. This court determined that there is no basis in the plain language of the Code of Civil Procedure or the supreme court rules for a specificity requirement; accordingly, the court declined to hold that post-judgment motions in nonjury cases must contain some undefined degree of detail. In a special concurrence, the legislature was urged to address the lack of content requirements for such motions in nonjury cases.

Provision of the Liquor Control Act of 1934 Declared Unconstitutionally Vague

In *People v. Law*, S. Ct. Doc. 93389 (December 5, 2002), this court determined that section 6-16(c) of the Illinois Liquor Control Act of 1934 (235 ILCS 5/6-16(c)) which creates the misdemeanor offense of "Resident Allowing Person/s Under 21 to Leave Residence After Consuming Alcohol" is unconstitutionally vague. The court held that the statute is facially invalid because it does not make clear what actions a resident is supposed to take to prevent an intoxicated minor from leaving the premises, and because it does not explain what an individual should do to avoid committing the felony offense of unlawful restraint in prohibiting a minor from leaving the premises.

Parental Immunity Doctrine Does Not Apply to Residential Child Care Facilities

In *Wallace v. Smyth, et al.*, No. 93144 (December 19, 2002), our court declined to extend the parental immunity doctrine to a corporate entity. The doctrine is a judicial creation which relies on public policy justifications and focuses on the nature of the conduct and the nature of the relationship. The court concluded that the corporate-child relationship does not equal the parent-child relationship, however similar the responsibilities may be.